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July 8, 2013

Chief James Redman
El Cajon Police Department
100 Civic Center Way
El Cajon, CA 92020

Re: Non-fatal shooting of Mr. Muayed Salim Salih on September 1, 2012 by El Cajon Police Officer Roberto Bonilla; El Cajon Police Department Case No. 12007903; DA Special Operations Case No. 12-080PS; Deputy District Attorney assigned: Patrick McGrath

Dear Chief Redman:

We have reviewed the reports and other materials compiled by your agency's Crimes of Violence/Homicide Unit concerning the non-fatal shooting of Mr. Muayed Salim Salih by El Cajon Police Officer Roberto Bonilla on September 1, 2012. A District Attorney Investigator responded to the scene and was briefed by El Cajon Police Investigators. This case was presented to the District Attorney's Office for review on February 13, 2013.

Synopsis

Patrol Officer Roberto Bonilla responded to a call of an open line phone call to 911. While enroute, he was informed that there was a man with a metal bar attempting to attack another man. When Bonilla arrived at the scene, Mr. Muayed Salim Salih walked quickly toward Bonilla with a torque wrench and round metal object. Bonilla shot Salih five times. Salih was transported to the hospital and survived his injuries.

Persons Involved

Mr. Muayed Salim Salih was 39 years-old at the time of this incident and lived in El Cajon. Salih was armed with an 18-inch long steel torque wrench and a round metal part to an industrial meat grinder.

Officer Bonilla had been a full-time police officer for nearly two years when this incident occurred. Bonilla was in full uniform and assigned to routine patrol duties in El Cajon.

Chief James Redman
July 8, 2013
Page 2 of 6

Background

Mr. Salih told investigators that he has had a long running feud with a former friend, named Mr. Abdul Hassan Al-Maleki. According to sheriff's records, Salih has been arrested in the past for assaultive behavior toward Al-Maleki and members of Al-Maleki's family. On January 25, 2012, Salih was found guilty of assault with a deadly weapon and making criminal threats against Al-Maleki and members of his family. On February 23, 2012, Salih was served with a temporary restraining order for the protection of Al-Maleki and family.

Mr. Salih said that on September 1, 2012, he saw Mr. Al-Maleki in the International Food Store. Salih admitted that he threw a can of food at Al-Maleki and called him, "A piece of shit." Witnesses said that Salih hit Al-Maleki with a can of food then armed himself with a handheld knife sharpening rod and a round metal part from an industrial meat grinder. Salih chased Al-Maleki throughout the store while Al-Maleki called out for help. Salih also injured Al-Maleki's 15 year-old son, Mohammed. The foot chase led out into the street. Salih went to his car and left the handheld knife sharpening steel rod on the front seat. Salih then armed himself with an 18-inch long torque wrench and also held a round metal part from an industrial meat grinder. Salih continued chasing Al-Maleki as onlookers watched and called 911.

Officer-Involved Shooting

At approximately 12:02 p.m., El Cajon Police Officers Bonilla and Gomes responded to a radio call of an open 911 line at the International Food Store, located at 502 East Main Street. While enroute, they were informed that there was a man with a metal bar attempting to attack another man. Bonilla was the first to arrive at the scene. Bonilla stopped his police car in the street, facing the parking lot. Mr. Salih immediately approached Bonilla while holding a round metal part from an industrial meat grinder in his right hand and an 18 inch long steel torque wrench in his left hand. Salih's arms were raised as he yelled at and advanced toward Bonilla. Bonilla got out from his marked police car, drew his weapon and pointed it at Salih. Bonilla retreated into the #2 traffic lane as Salih came toward him. Bonilla ordered Salih to stop. Salih disregarded Bonilla's orders and continued his rapid approach while holding the torque wrench and metal cylinder. Bonilla fired his weapon three times as he retreated from Salih. Salih was shot but continued advancing toward Bonilla with the metal cylinder in his right hand. Bonilla fired twice more until Salih stopped and fell to the ground.

Mr. Salih's Statement

Mr. Salih admitted to the initial attack on Mr. Al-Maleki inside the International Food Store. Salih also said that he saw Officer Bonilla arrive. Salih wanted to scare the officer because Salih was angry. Salih admitted to being armed with the impromptu weapons, consisting of the torque wrench and metal cylinder when he attacked Bonilla. Salih said, "When he shot me, he was doing his job. He's got to protect himself."

Chief James Redman
July 8, 2013
Page 3 of 6

Officer Bonilla's Statement

Officer Bonilla said he responded to 502 East Main Street regarding a telephone call of unknown trouble to the 911 operator. Bonilla responded with lights and sirens. As Bonilla approached the area of the call, the electrical system of his patrol car malfunctioned. It turned off his red/blue lights, siren and dashboard video system. A large trash truck was stopped in the street blocking Bonilla's view of the International Food Store. Bonilla drove around the trash truck and immediately saw an apparent witness standing in the traffic lane and flagging him down. The male witness was pointing toward the parking lot of the food store. Bonilla stopped his car in the traffic lane and saw Mr. Salih approaching him at a fast pace. Salih was holding a long metal object in one hand and a round metal disc in the other. Salih held the metal bar above his head. Salih appeared to be angry and was quickly approaching Bonilla's vehicle. Bonilla exited from his patrol car because he perceived the objects in Salih's hands to be weapons. Bonilla said he feared for his life as Salih continued toward him with the weapons. Bonilla yelled, "Stop! Stop!" but Salih refused to listen. Bonilla said he aimed downward at Salih's lower body because he was afraid of shooting the witnesses standing in the background of Salih. Salih got within six to seven feet when Bonilla fired his first shot. Salih continued advancing toward Bonilla. Bonilla said he fired a few more times until Salih stopped his attack and fell to the ground. Bonilla was not sure of how many times he fired at Salih.

Officer Gomes' Statement

Officer Patrick Gomes explained that he and Officer Bonilla responded to a disturbance at a grocery store on East Main Street. Both Gomes and Bonilla responded with their lights and sirens on. Bonilla's car took the lead. Gomes saw a Waste Management truck in the #2 traffic lane of East Main Street, blocking the view of the food store. Bonilla started to turn his car into the parking lot of the food store and stopped abruptly in the middle of the street. Gomes saw bystanders pointing to the store's parking lot. Bonilla got out of his car. Gomes said he saw a male, later identified as Mr. Salih approach Bonilla from the parking lot. Salih was holding a silver or chrome pole in his left hand, raised above his head and a metal object that looked like a car's brake drum in his right hand. Salih continued approaching Bonilla. Gomes said he heard three shots and realized that Bonilla had fired at Salih. Gomes said he then heard Bonilla order Salih to get on the ground. Salih did not comply immediately. Gomes said that he and Bonilla repeated the order to get on the ground. Salih eventually went down to the ground and was taken into custody.

Witness Statements

Nine civilian witnesses on East Main Street saw that Mr. Salih was armed with metal objects, later identified as a round metal part from an industrial meat grinder and a torque wrench. They heard Officer Bonilla order Salih to either stop his approach or drop the objects in his hands. They saw that Salih continued his assault on Bonilla and was shot after he refused to follow the officer's directions.

Chief James Redman
July 8, 2013
Page 4 of 6

Investigation

The crime scene was secured and a scene investigation was conducted. The investigation determined that Officer Bonilla fired five times. Five expended .40 caliber shell casings were recovered at the scene. The casings were located in an area consistent with Bonilla's stated firing position. All bullet impacts appear to have been fired in a northerly direction that was consistent with Bonilla's firing position. The audio recordings from the open line to the 911 Operator were reviewed. The open line to 911 captured the audio portion of shooting event, in recording the sound of the shots that were fired.

Two video cameras captured the event from different vantage points. Officer Gomes' dashboard video camera captured the event from one angle, showing Bonilla stepping out from the driver's side door of his car, drawing his weapon, and retreating backwards as Salih approached Bonilla with the metal object in his hand, prior to being fired upon. A security camera located outside of the market also captured the event. It showed a man in a dark shirt (Al-Maleki) being chased by a man in a red shirt (Salih). Salih had a metal rod in his left hand and a round object in his right hand as he chased Al-Maleki from the street into the store and out again. From a distance, the video shows Bonilla's police car arriving at the scene, and Salih immediately walking directly towards the police car. Two other in-store cameras captured Salih chasing Al-Maleki through the store while armed with the rod and metal object. The dashboard video system from Bonilla's police car stopped functioning prior to Bonilla's arrival at the scene due to an electrical problem in the police unit.

An 18-inch long torque wrench and a round metal part to an industrial meat grinder were found on the ground near Salih. The round metal part to the meat grinder was also measured. The height of the object was approximately 2.25 inches. The diameter of the larger circle of the attachment was approximately 7.75 inches. The metal cylinder weighed at approximately 4.5 pounds.

Physical Injuries

Mr. Muayed Salih was transported to the Emergency Room of Sharp Memorial Hospital for treatment of four gunshot wounds. Salih was admitted and treated for the gunshot wounds to his left upper abdominal quadrant, his right abdominal region below the costal margin, his right thigh and his left wrist. Salih survived his injuries and was discharged.

Criminal Filing

The District Attorney's Office charged Mr. Salih with one count of PC 664/187(a) Attempted Murder on Mr. Al-Maleki, one count of PC 12022(b) (1) Possession of Deadly Weapons, two counts of PC 245 (a) (1), Assault with a Deadly Weapon on Al-Maleki and on Al-Maleki's son and one count of PC 245(c) Assault with a Deadly Weapon on a Peace Officer. On December 17, 2012, a Preliminary Hearing was held. The Honorable Herbert J. Exarhos found sufficient cause to bind the criminal case over for trial. A Felony Jury Trial has been scheduled to be held on July 16, 2013.

Chief James Redman
July 8, 2013
Page 5 of 6

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.'" [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Conclusions

Police Officers Bonilla and Gomes responded to a radio call a man with a metal bar assaulting another man. Video data recorded that Bonilla arrived at the scene and stopped his marked police car in the street. Bonilla was immediately assaulted by Mr. Salih. Salih advanced toward Bonilla while armed with a large metal torque wrench and a large metal cylinder. Salih got to within six or seven feet of Bonilla, before Bonilla fired his weapon, while retreating from Salih.

Chief James Redman
July 8, 2013
Page 6 of 6

Officer Bonilla clearly fired at Mr. Salih in self-defense. He therefore bears no criminal liability for his actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,

BONNIE M. DUMANIS
District Attorney
County of San Diego

By: Fiona Khalil
FIONA KHALIL
Deputy District Attorney
County of San Diego

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